In the High Court of Uttaranchal at Nainital.

Criminal Misc. Application No. 682/2001
(Old No. 2408/1996)

Shiv Singh S/o Prem Singh,
R/o village Siyala Patwari Kshetra Sikhi
Dhang, Tehsil Champawat
District Pithoragarh ……..Petitioner.

Vs.

1. Ganesh Ram S/o Himmat Ram,
   R/o village Siyala Patwari Kshetra Sukhi Dhang,
   Tehsil Champawat District Pithoragarh.
2. State of U.P.
3. Om Prakash Arya, S.D.M. Lohaghat,
   District Pithoragarh …….. Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri S.S. Adhikari learned counsel for the revisionist and Sri Nandan Arya learned A.G.A. and perused the record.

By means of this petition under section 482 of the Code of Criminal Procedure (for short 'Code') the propriety and legality of the order dated 25.5.1996 passed by Pargana Magistrate Lohaghat in criminal case no. 48/1995 under section 145 of the 'Code' has been questioned and it has been prayed that the impugned order be quashed.

From perusal of the record it appear that initially the preliminary order passed under section 145 (1) of the 'Code' was challenged by the petitioner and a transfer application was preferred in which the further proceedings in the said case were stayed till 15.5.1996. The learned Pargana Magistrate Lohaghat after the said date proceeded to decided the proceedings finally by observing that no further stay order was received from the Hon'ble High Court. It appear that the stay order was extended further but it was not brought to the notice of the learned Pargana Magistrate, Lohaghat therefore he had no option but to proceed with the case according to law and decide it finally. On this account the propriety and legality of the final order so passed on 25-5-1996 can not now be challenged.

A bare perusal of the impugned order reveal that the first party Ganesh Ram had been found to be in possession of the disputed property within two months next preceding the preliminary order on the basis of the material on record and therefore the proceedings under section 145 of the 'Code' were finally terminated by this impugned order in his favour directing that his possession shall not be disturbed unless and until an order of eviction is obtained from a court of competent jurisdiction. In this event the second party – petitioner was legally obliged to file a suit for declaration and possession before a competent court of civil jurisdiction but the same could not be done in view of the present petition being filed for quashing of the proceedings.

In the face of the facts of the case when there was no evidence on record to challenge the claim of the first party regarding his possession on the dispute property, the learned Pargana Masitrate has had no alternative but to give a finding in favour of the first party and terminate the proceedings accordingly in his favour. There being no impropriety and illegality in the impugned order the same can not therefore be quashed or set aside.

The petition therefore is devoid of merit and is dismissed. The remedy available to the petitioner-second party is to file a regular suit for declaration and possession over the property in dispute and in case question of limitation is raised the petitioner may prefer an application for condonation of delay as provided under section 14 of the Indian Limitation Act, 1963.

(Irshad Hussain, J.)

Dated: 1-4-2004

ISB